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**NASA**  
**Procedural**  
**Requirements**

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**COMPLIANCE IS MANDATORY**

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## **NASA's Plan for A Drug Free Workplace**

**Responsible Office: Office of Human Capital Management**

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## Preface

### P.1 Purpose

NASA strives to ensure that the workplace is safe and free of illegal drug use by all employees. This directive is NASA's Plan for a Drug-Free Workplace and, in conjunction with applicable statutory and regulatory requirements, including those approved by the Department of Health and Human Services, establishes the responsibilities, procedures, and guidelines for a comprehensive Drug-Free Workplace Program.

### P.2 Applicability

- a. This NPR is applicable to NASA Headquarters and NASA Centers, including Component Facilities, Technical and Service Support Centers, and the Office of the Inspector General.
- b. Any reference to Center Director(s) or Centers includes the Executive Director for Headquarters Operations and the Executive Director for NASA Shared Services Center (NSSC).
- c. This directive does not apply to contractor employees.
- d. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended, but not required, "will" denotes expected outcomes, and "are/is" denotes descriptive material.
- e. In this directive, all document citations are assumed to be the latest version, unless otherwise noted.

### P.3 Authority

- a. Drug Abuse, 5 U.S.C. 7361.
- b. National and Commercial Space Programs, Drug and Alcohol Testing, 51 U.S.C. 31102.
- c. Drug-Free Federal Workplace, E.O. 12564.
- d. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA) Mandatory Guidelines for Federal Workplace Drug Testing Programs, 73 Fed Reg. 71858, November 25, 2008.

### P.4 Applicable Documents and Forms

- a. Records Maintained on Individuals, 5 U.S.C. § 552a.
- b. Definitions, 5 U.S.C. §§ 8331(20) and 8401(17).
- c. Drug Abuse Prevention and Control, Definitions, 21 U.S.C. § 802(6).
- d. Security Requirements for Government Employment, E.O. 10450.
- e. National Security Information, E.O. 12356.
- f. Drug-Free Federal Workplace, E.O. 12564.
- g. Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
- h. Drug and Alcohol Free Workplace, 48 CFR §§ 1823.5 and 1852.223-74.
- i. NPR 1441.1, NASA Records Retention Schedules.
- j. NPR 8621.1, Mishap and Close Call Reporting, Investigating, and Recordkeeping.
- k. HHS, SAMHSA, Center for Substance Abuse Prevention, Medical Review Officer (MRO) Manual for Federal Agency Workplace Drug Testing Programs.
- l. HHS, SAMHSA, Model Plan for a Comprehensive Drug-Free Workplace Program (DFWP).
- m. HHS, SAMHSA, Urine Specimen Collection Handbook for Federal Agency Workplace Drug Testing Programs.
- n. National Archives and Records Administration (NARA) General Records Schedule (GRS) 1-36, Federal Workplace Drug Testing Program Files.

### P.5 Measurement/Verification

The Office of Human Capital Management (OHCM) will conduct periodic reviews for compliance. Centers shall conduct periodic evaluations of their programs and cooperate with regular and periodic data gathering and other evaluation activities as required in support of the Agency DFWP.

## **P.6 Cancellation**

NPR 3792.1B, Plan for a Drug Free Workforce, dated July 29, 2006.

# Chapter 1. General

## 1.1 General Provisions

1.1.1 E.O. 12564 established a condition of employment for all Federal employees to refrain from using illegal drugs on or off duty.

1.1.2 It is NASA's goal to maintain a workplace that is free of illegal drugs and eliminate illegal drug use by all employees both on or off duty. To achieve this objective, the Agency has established a comprehensive drug-prevention program that includes:

- a. Emphasis on prevention through supervisory training and employee education, employee counseling and assistance, and voluntary drug testing for all employees.
- b. Opportunity for rehabilitation for employees who are using illegal drugs.
- c. Assurance of personal dignity and respect for employee's privacy.
- d. Counseling or rehabilitation in lieu of disciplinary action against employees for illegal drug use when the employee voluntarily admits to illegal drug use, obtains counseling or rehabilitation in accordance with this directive, and refrains from any future use of illegal drugs.

1.1.3 While it is the Agency's intent to assist employees' efforts to overcome drug-related problems, the use of illegal drugs will not be tolerated.

1.1.4. Active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program.

1.1.5 The NASA drug testing program shall follow the HHS, SAMHSA Mandatory Guidelines for Federal Workplace Drug Testing Programs. If any of the procedures specified in this directive are inconsistent with the Mandatory Guidelines, the guidelines will apply.

*Note: The HHS's Mandatory Guidelines for Federal Workplace Drug Testing Programs is the Government-wide regulation for Federal workplace drug testing programs. In this directive, the regulation is referred to as the "Mandatory Guidelines."*

1.1.6 In accordance with the Mandatory Guidelines, the Agency shall test for the following drugs: Marijuana, Cocaine, Amphetamines, Opiates, and Phencyclidine (PCP).

*Note: The list of drugs/controlled substances that an Agency can test for is subject to change. Refer to the most recent version of the Mandatory Guidelines.*

1.1.7 In accordance with the Mandatory Guidelines (Section 3.2), the Agency may have a specimen tested for additional drugs/controlled substances on a case-by-case basis when conducting a specimen collection for reasonable suspicion, post accident, or unsafe practice testing.

## Chapter 2. Responsibilities

### 2.1 Administrator

2.1.1 In accordance with 51 U.S.C. 31102, the NASA Administrator shall prescribe regulations for drug testing.

### 2.2 Assistant Administrator for Human Capital Management (AA, HCM)

2.2.1 The AA for HCM shall: a. Set Agency policy direction and ensure the implementation of a DFWP complies with E.O. 12564 and implementing regulations. b. Designate the Agency Drug Program Manager (DPM) 2.2.2 In collaboration with the DPM, the Agency OHCM and the Center Drug Program Coordinators (DPCs) will provide training to ensure that all employees and supervisors are informed about the Agency DFWP.

### 2.3 Agency DPM

2.3.1 The Agency DPM shall:

- a. Report to the AA, HCM on the status of the DFWP.
- b. Oversee implementation of the Agency program.
- c. Ensure efficient and effective use of resources and accomplish reliable and accurate testing.

### 2.4 Executive Director, NSSC

2.4 The Executive Director, NSSC or designee shall:

- a. Serve as the designated Agency representative in accordance with the Mandatory Guidelines.
- b. Establish/direct the Agency Drug Testing Team.
- c. Ensure all personnel involved in the drug testing program comply with the confidentiality requirements contained in law and this directive (reference 5 U.S.C. 552a and 42 CFR Part 2).
- d. In accordance with the Mandatory Guidelines and this directive:
  - (1) Manage, administer, and implement the Agency's drug testing program.
  - (2) Procure the services of a certified licensed physician to serve as the Agency's Medical Review Officer.
  - (3) Procure the services of a specimen collection service and a HHS certified laboratory service.
  - (4) Coordinate with Center DPCs on program administration matters and ensure collection sites meet requirements.
  - (5) Monitor program for compliance and ensure reporting requirements are met (e.g., monitor collection activities related to drug tests, inspect at least 5 percent of collection sites annually, submit blind samples, complete the HHS Annual Survey Report.)
  - (6) Coordinate with and report to the DPM on Center DPC activities and findings that may affect the reliability or accuracy of laboratory results.

### 2.5 Medical Review Officer (MRO)

2.5.1 The MRO shall:

- a. Serve as the Agency's principal contact with the laboratory in ensuring the effective operation of the testing portion of the program.
- b. Complete required MRO training and certification and comply with all provisions of this directive and the SAMHSA Center for Substance Abuse Prevention, MRO Manual for Federal Agency Workplace Drug Testing Programs.
- c. Serve as the Agency subject matter expert on current MRO policy requirements. Respond to questions and provide advice and assistance on subject matter.
- d. Review and evaluate laboratory test results of the Centers' employees and tentatively selected applicants to Test Designated Positions (TDPs).
- e. Review all test results reported as positive, adulterated, substituted, invalid, or rejected for testing.
- f. Review at least 5 percent of all negative test results in accordance with the Mandatory Guidelines (Section 13.3) to

ensure proper procedures are followed.

- g. Ensure that individuals whose test results are positive, adulterated, substituted, or invalid are afforded an opportunity to explain the test result in accordance with this directive.
- h. Conduct (or refer for) a medical evaluation of an individual unable to provide a specimen in accordance with the Mandatory Guidelines.
- i. Adjudicate requests from individuals for split specimen testing in accordance with the Mandatory Guidelines.
- j. Report all test results to the NSSC Drug Testing Team.

## **2.6 Center Directors**

2.6.1 Center Directors shall:

- a. Implement a sound Center-wide DFWP.
- b. Ensure that Center-level policies and programs are consistent with HHS regulations/guidance, and this directive.
- c. Decide on administrative appeals from individual employees who disagree with TDP determinations made on their positions.

## **2.7 Human Resources Directors (HRDs)**

2.7.1 HRDs shall:

- a. Designate the Center DPC.
- b. Assist supervisors with the identification of positions within their organizations that are subject to random testing in accordance with Appendix C of this directive.
- c. Ensure that vacancy announcements for TDPs include the appropriate statement regarding pre-employment and random testing.
- d. Notify internal applicants not previously subject to random drug testing or outside applicants tentatively selected for a TDP that appointment to the position is contingent upon a negative drug test result.

*Note: In this directive, HRDs refers to Center (or Headquarters) Human Resources and Human Capital Directors. References to Human Resources Offices (HROs) means the Center (or servicing) Human Resources Office.*

## **2.8 Offices of Chief Counsel (OCC) and Headquarters Office of General Counsel (OGC):**

2.8.1 The OCC and OGC shall review reports of reasonable suspicion referred to them pursuant to the procedures described in paragraph 3.5.3 and determine whether a reasonable suspicion warranting drug testing exists.

## **2.9 Center Drug Program Coordinators (DPCs)**

2.9.1. The Center DPCs shall:

- a. In coordination with Center officials and the Employee Assistance Program (EAP), publicize and disseminate DFWP educational materials and oversee training and education sessions regarding the Agency Drug Test Program, drug use, and rehabilitation.
- b. Coordinate administrative actions with management when a finding of illegal drug use occurs.
- c. As requested, assist the NSSC Drug Testing Team with the delivery of the test notifications to employees.
- d. Ensure the NSSC Drug Testing Team has access to Center drug testing sites.
- e. Notify the NSSC Drug Testing Team when an employee is ready to begin follow-up testing.
- f. Comply with privacy and confidentiality requirements.

## **2.10 Chief Health and Medical Officer (CHMO)**

2.10.1. The CHMO shall:

Ensure that the EAPs across the Agency support the requirements of the Agency's DFWP.



## 2.11 Center Employee Assistance Program (EAP)

2.11.1 EAP Coordinators/Counselors shall:

- a. Support the overall goals of the Agency DFWP.
- b. Provide an opportunity for counseling and treatment/rehabilitation referral services to any employee who is referred to the EAP by his/her supervisor or is a self-referral.
- c. Provide education and training on the types and effects of drugs, the symptoms of drug use, the impact of drugs on performance and conduct, treatment, rehabilitative, and confidentiality issues.
- d. Ensure the confidentiality of test results and related medical treatment and rehabilitation records.
- e. Assist supervisors with employees who are having performance and/or personal problems that may be related to illegal drug use.
- f. Monitor the progress of any referred employee during and/or after the rehabilitation period and provide feedback to his/her supervisor.
- g. Maintain a list of rehabilitative and treatment organizations that provide counseling and rehabilitative programs services.
- h. Be familiar with applicable laws and guidelines (reference E.O. 12564, Mandatory Guidelines, and SAMHSA's Model Plan for a Drug Free Workplace) and drug treatment/rehabilitative insurance coverage that is available to employees through the Federal Employee Health Benefits Program.

## 2.12 Supervisors

2.12.1 Supervisors shall:

- a. With the assistance of their HRO, identify positions within their organization that are subject to random testing in accordance with Appendix C of this directive, NASA Guidelines for Determining TDPs Subject to Random Drug Testing.
- b. Be familiar and comply with all requirements and provisions of this directive.
- c. Participate in training on recognizing and addressing illegal drug use in the workplace.
- d. Treat employees with dignity and protect their privacy in reaching NASA's goal of a drug-free workplace.
- e. Upon determining illegal drug use by an employee, take the appropriate actions in accordance with this directive.
- f. Follow the procedures in chapter 3 of this directive to:
  - (1) Notify their employees who have been selected for random drug testing, ensuring that each employee receives a drug test notice in private and in accordance with the timeframe and other instructions in the supervisor notice.
  - (2) Defer random drug tests for employees in appropriate situations.
  - (3) Request reasonable suspicion testing in appropriate situations.
  - (4) Determine if post-accident or unsafe practice testing is required and ensure such testing is performed.
  - (5) Grant an employee up to one hour (or more as necessitated by travel time) of excused absence for each counseling session during the assessment/referral phase of rehabilitation.
  - (6) When the testing is conducted off site, authorize the appropriate time during work hours for an employee to travel to the collection site for testing and reimburse for use of privately owned vehicle or other mode of transportation, when Government transportation is not available.
- g. In consultation with HRO, take action to address employee performance and/or conduct problems that may be caused or impacted by drug use, to include referring employees to EAP when appropriate.

## 2.13 Employees

2.13.1 Employees shall:

- a. Refrain from the use of all illegal drugs.
- b. Report as directed for drug testing in accordance with instructions and this directive.

2.13.2 Employees assigned to positions that require drug testing (i.e., a TDP), are subject to random testing for the use of illegal drugs.

2.13.3 All employees are subject to reasonable suspicion drug testing, post-accident and/or unsafe practice drug testing regardless of the TDP designation of their position.

## Chapter 3 Guidelines for Drug Testing

### 3.1 General Guidelines and Procedures

3.1.1 In accordance with the Mandatory Guidelines and the HHS Urine Specimen Collection Handbook for Federal Agency Drug Testing Programs, the Agency shall use trained collection personnel and laboratories approved and certified by HHS, and adhere to strict confidentiality requirements.

3.1.2 Each Center shall identify facilities for drug testing, which comply with the Mandatory Guidelines.

3.1.3 Individuals subject to testing are permitted to provide urine specimens in private, unless a direct observation collection procedure is necessary (pursuant to the Mandatory Guidelines). In these cases, the collector or MRO informs the NSSC Drug Testing Team. In turn, with the approval of the DPC and HRO, the NSSC Drug Testing Team takes the necessary steps to conduct an observed collection.

3.1.4 The Agency shall use a split specimen method of collection, in which a urine specimen is subdivided into two parts, and independently sealed in the presence of the individual being tested.

3.1.5 All employees randomly tested will receive written notification of their test results.

3.1.6 When a specimen is reported by the laboratory as positive, adulterated, substituted, or invalid, the MRO shall contact the individual and provide them the opportunity to provide a legitimate medical explanation for the test result.

3.1.6.1 If the individual chooses to offer an explanation for the aforementioned results, they may present to the MRO any information and/or declare any condition they believe might have affected the test result (e.g., legally prescribed medication).

3.1.6.2 The MRO shall consider all information provided. Employees and applicants are not entitled to present evidence to the MRO in a trial-type administrative proceeding; however, the MRO has the discretion to accept evidence in any manner deemed most efficient. The HHS MRO Manual for Federal Agency Workplace Drug Testing Programs provides detailed information on when it is appropriate to accept evidence.

3.1.6.3 If the MRO determines that the employee or applicant has provided a legitimate medical explanation for the other than negative (positive, adulterated, substituted, or invalid) test result, the MRO shall report a negative or negative/dilute result to the NSSC Drug Testing Team.

3.1.7 If the test result is negative/dilute, refer to paragraph 3.8. If the test result is positive, substituted, or adulterated, the MRO shall inform the individual that he/she may request a retest of the specimen. The individual must submit such request to the MRO, verbally or in writing, within 72 hours after being informed of the test results by the MRO.

3.1.7.1 The retest is conducted using the split of the specimen at a different HHS certified laboratory, at the Agency's expense.

### 3.2 Pre-employment Drug Testing

3.2.1 All applicants, including current Agency employees, tentatively selected for a TDP shall take a pre-employment drug test, unless the selectee is a current NASA civil servant who occupies a position subject to random drug testing at the time of the selection.

3.2.2 Vacancy announcements for TDPs shall include an appropriate statement regarding pre-employment testing, e.g., "Any applicant tentatively selected for this position will be required to submit to screening for illegal drug use prior to appointment and may be subject to random drug testing while occupying the position." Failure of a vacancy announcement to contain this statement will not preclude pre-employment testing if advance written notice is provided to an applicant in some other manner.

3.2.3 Procedures for Pre-employment Testing:

a. Upon notification by the HRO that an applicant has been tentatively selected for a TDP, the NSSC Drug Testing Team will send a drug test package to the applicant.

b. The applicant shall take the drug test as soon as possible once the drug test notice has been received but no later than two business days after the applicant has received the package.

c. The applicant, unless they are a current NASA employee, is responsible for the travel costs to/from the collection site.

e. The Agency is responsible for the specimen collection and analysis costs.

f. The MRO shall review and report the test results to the NSSC Drug Testing Team, who will report the results to

the HRO.

### **3.3 Random Drug Testing**

3.3.1 Employees occupying positions that have been designated as TDP shall be subject to random drug testing.

3.3.2 The NSSC Drug Testing Team shall conduct random drug testing at least four times a year.

3.3.2.1 The testing team will test at least 25 percent of the total TDP pool each year.

3.3.3 Employees not in TDPs may volunteer for random testing by notifying the HRO.

3.3.3.1 Volunteer employees shall be included in the pool of TDPs subject to random testing and the same conditions, procedures and consequences for the finding of illegal drug use as those employees in TDPs.

3.3.3.2 Volunteers shall remain in the random drug testing pool until they withdraw from participation by notifying the HRO at least 48 hours prior to a scheduled test.

3.3.4 Upon employees' assignment to a TDP, the NSSC Drug Testing Team shall issue an initial drug testing notice to each employee. The notice will include the following:

- a. The position is a designated TDP and accordingly, employees are subject to random drug testing beginning 30 days after the date of the notice.
- b. Employees are subject to disciplinary action, up to and including removal, if found to have used illegal drugs or for refusal to take a required drug test.
- c. The circumstances under which the employee may voluntarily identify as a user of an illegal drug or drugs and receive counseling or rehabilitation without being subject to disciplinary action.

3.3.5 Employees in TDPs shall sign and return the drug testing notice in accordance with applicable procedures, which acknowledges that the employee has received and read the notice.

3.3.5.1 If the employee refuses to sign the acknowledgment, the employee's supervisor shall note on the acknowledgment form that the employee received the notice. An employee's failure to sign the notice will not preclude testing.

3.3.6 The NSSC shall notify the employee's first-level supervisor when an employee is selected for random drug testing at least two hours prior to the testing and may occur the day before the testing for the purposes of determining if the employee is available (i.e., the employee is in an approved leave status or off site for training, telecommuting, etc.)

3.3.6.1 The supervisor shall notify the employee that he/she is directed to report for testing, per the instructions provided by the NSSC no sooner than two hours prior to the scheduled test time.

### **3.4 Deferral of Random Testing**

3.4.1 While participating in a counseling or rehabilitative program, the employee may be exempted from the random TDP pool for a period not to exceed 60 days, unless the employee is subject to an agreement or rehabilitative plan approved by management, in which case the employee may be exempted for the period specified in the agreement or rehabilitative plan.

3.4.2 An employee's random test may be deferred by the first-line supervisor or a higher level supervisor when the employee is unavailable for testing based on any of the following:

- a. The employee is in a leave status that was approved prior to the supervisor's receipt of the test notice.
- b. The employee is in an official travel status.
- c. The employee is in an approved telecommuting status or on his/her scheduled day off under an Alternative Work Schedule.
- d. The employee is participating in a previously scheduled and approved work activity (e.g., training, conference, or meeting) off Center during the entire drug testing period.
- e. When the employee is on Center but both the first- and second-level supervisors agree that, during the entire test period, there is a compelling need for the employee to perform a task or function that is time critical and for which no other employee can be substituted.

3.4.3 An employee whose test is deferred is subject to testing within 60 days following the deferral. Therefore, the supervisor shall not inform the employee that she/he was selected for random testing and deferred.

3.4.4 For an employee's deferred test, the supervisor shall send the NSSC Drug Testing Team a completed copy of the deferral form, explaining the reason for the deferral.

### **3.5 Reasonable Suspicion Testing**

3.5.1 Reasonable suspicion testing may be required for any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment.

3.5.2 A reasonable suspicion is not the same as a certainty; however, undocumented hunches are not sufficient to constitute a reasonable suspicion. Factors that might support a reasonable suspicion include, among other things, any of the following:

- a. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.
- b. Arrest or conviction in the last year for a drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal-drug possession, use, or trafficking (e.g., distribution of a controlled substance).
- c. Information provided either by reliable and credible sources or by independent corroboration.
- d. Newly discovered evidence that the employee has tampered with a previous test result.

#### **3.5.3 Procedures for Conducting Reasonable-Suspicion Testing.**

- a. If an employee is reasonably suspected of using illegal drugs, the employee's supervisor shall document, in writing, the information, facts, and circumstances that form the basis to recommend reasonable-suspicion testing. The supervisor's written documentation will include, at a minimum, the approximate dates and times of any relevant incidents, reliable (credible) sources of information, and the rationale leading to the recommendation for the test.
- b. The supervisor shall obtain concurrence by a higher-level supervisor and the Center's OCC (OGC for Headquarters employees) before requesting a reasonable-suspicion test. After receiving concurrence, the supervisor will inform the DPC, who will contact the NSSC Drug Testing Team. The testing team will normally schedule the test within two hours of notification.
- c. Once reasonable-suspicion testing is conducted, the documentation described above in paragraph 3.5.3 a. will be supplemented with the findings of the test and the action taken, if applicable.
- d. Any employee with a verified test result other than negative (i.e., positive, substituted, adulterated, or invalid) shall be subject to the same consequences as an employee found to use illegal drugs through any other means.
- e. Employees with negative/dilute results shall retest until a negative result is received. However, if after further investigation the MRO determines there is a medical or physiological reason causing the negative/dilute results, the MRO will report the test as negative.

### **3.6 Post-Accident or Unsafe Practice Testing**

3.6.1 An employee whose action(s) at or about the time of an accident (including an incident meeting the definition of a mishap as described in NPR 8621.1) provides reason to believe that such action(s) may have caused or contributed to an accident or cannot be completely discounted as a contributing factor to the accident shall be subject to drug testing as soon as practicable following an accident that involves one or more of the following:

- a. The accident results in a death or personal injury requiring hospitalization.
- b. The accident results in damage to Government or private property estimated to exceed \$10,000.

#### **3.6.2 Testing for illegal drug use can be required for an employee in a non-TDP.**

3.6.3 A supervisor at the scene of an accident or, in the absence of a supervisor, a responsible official shall take the following steps to determine whether or not to initiate a post-accident or unsafe practice testing for illegal drug use:

- a. Immediately evaluate the accident to determine whether or not it meets any of the criteria of paragraph 3.6.1, based on a review of the available facts.
- b. Following a determination that the accident meets the criteria for testing for illegal drug use, take all practical steps to identify and document the names of employees who are subject to post-accident testing.
- c. Inform, at a minimum, the DPC of the accident and the determination of the need to conduct post-accident or unsafe practice testing.

3.6.4 As soon as practicable after the accident, the supervisor at the scene of an incident or, in their absence, a

responsible official shall document in writing the facts and circumstances of the accident that support the determination to conduct testing for illegal drug use, including the names of the employee(s) subject to testing.

3.6.5 Upon notification, the DPC shall immediately notify the Center Director, or designee of the Center Director, and contact the NSSC Drug Testing Team to initiate testing.

a. The supervisor or other management official shall inform the employee of the reason(s) that supported the decision to conduct a post-accident or unsafe practice drug test.

b. Testing will be accomplished as soon as practicable after the accident.

3.6.6 Employees who are subject to testing shall remain readily available until testing has been completed.

3.6.6.1 Failure of an employee to remain readily available or refusal to submit to drug testing will subject the employee to the same consequences as an employee who refused to test under any other circumstances.

3.6.6.2 Nothing in this directive will be construed to require a delay of necessary medical treatment for an injured employee following an accident or to prohibit an employee from leaving the scene of an accident to obtain necessary emergency medical treatment.

3.6.6.3 Post-accident or unsafe practice testing shall be conducted independently of any mishap investigation. Nothing in this section will be construed to limit the authority of any entity or organization authorized to investigate a mishap or close call under NPR 8621.1.

3.6.7 Accident Testing of an Uninjured Employee.

a. For accidents that occur onsite during normal hours of duty, a supervisor at the scene of the accident or, in the absence of a supervisor, a responsible official shall direct an uninjured employee to remain at the scene or to go to a designated location, such as the Center's Health Unit, to await post-accident testing once all the mandatory steps have been taken in paragraph 3.6.3.

b. For accidents that occur onsite outside of normal hours of duty or occur off-site, a supervisor, at the scene of the accident or, in the absence of a supervisor, a responsible official shall direct an uninjured employee to remain at the scene of the accident or to go to a designated location to wait for post-accident testing.

3.6.8 Post-Accident Testing of an Injured Employee.

a. If an employee is injured and requires medical treatment and/or hospitalization, such treatment shall be provided immediately.

b. Immediately following medical treatment, an employee shall be subject to post-accident testing within the time limitation specified in this directive. When the employee requires off-site medical treatment, he/she is subject to post-accident testing upon returning to the work site or will be directed to the nearest collection facility, whichever is most expedient.

c. Under no circumstances shall a specimen collection occur at the employee's residence.

## **3.7 Follow-up Testing**

3.7.1 An employee, who has been referred to EAP based on a finding of illegal drug use, or by voluntary referral, as described in paragraph 4.4, and who successfully completes counseling and rehabilitation shall be subject to unannounced drug testing for a minimum period of one year and tested at least four times in that year or more frequently as specified in a disciplinary or last chance agreement.

3.7.2 The NSSC Drug Testing Team will be notified by an appropriate official (e.g., management, HR, EAP) to begin follow-up testing and be provided with the terms of the disciplinary or last chance agreement, if applicable.

3.7.3 Follow-up testing is distinct from testing that may be imposed as a component of the EAP.

3.7.4 Upon successful completion of a counseling or rehabilitative program, employees shall immediately be returned to the TDP pool and be subject to follow-up testing in accordance with this directive.

## **3.8 Negative/Dilute Results**

3.8.1. If the laboratory reports a test result as negative/dilute, the MRO shall inform the NSSC Drug Testing Team, who will arrange for the collection of another specimen from the employee as soon as possible. Retesting will continue until a negative result is received.

3.8.2 If a second negative/dilute result is received, as evidenced by the "Reason for Test" on the Federal Control Custody Form (CCF), the MRO shall counsel the donor, explaining that a negative result is required and advising them to refrain from excess fluids prior to the next test. In the "Notes" section of the Federal CCF, indicate the date



which the employee was counseled.

3.8.3 If the MRO determines that the employee's or applicant's justification for the other than negative or negative/dilute test result is not sufficient, the result is considered to be a verified positive test result. If the MRO determines that the individual is unable to provide a legitimate medical explanation for a substituted or adulterated test result, this is considered to be a refusal to test. If the MRO determines that the individual is unable to provide a legitimate medical explanation for an invalid test result, another specimen must be collected with direct observation. The MRO shall report the verified finding in accordance with the Mandatory Guidelines (Section 13.4) to the NSSC Drug Testing Team immediately for further action.

3.8.4 If less than four negative/dilute results are received from a random drug test, retesting shall be conducted off Center at the nearest NSSC contractor-provided site.

3.8.5 If four or more negative/dilute results are obtained from a single drug test, the NSSC Drug Testing Team will conduct retests at the Center. The DPC will assist in arranging for the test and with distribution of the retest notice.

3.8.6 If the results of a pre-employment drug test are negative/dilute, the NSSC Drug Testing Team will notify the Center HRO immediately. The HRO will contact the applicant/employee to inform him/her of the result and the requirement for a retest.

3.8.6.1 The NSSC Drug Testing Team will provide the applicant/employee with a drug retest notice.

### **3.9 Reconsideration of a TDP Designation**

3.9.1 If an employee disagrees that the position is a TDP, he/she may file a request for reconsideration to the Center Director (or designee).

3.9.2 The employee shall submit the request, in writing, within 15 days of the date that the employee is notified that their position is a designated TDP.

3.9.3 The appeal will set forth all relevant information.

3.9.4 The decision by the Center Director (or designee) shall be final. There is no further administrative reconsideration process.

## **Chapter 4. Finding of Illegal Drug Use and Disciplinary Consequences**

### **4.1 Determination**

4.1.1 An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

- a. Direct observation.
- b. Evidence obtained from an arrest or criminal conviction.
- c. A verified other than negative (positive, adulterated, substituted, or invalid) test result.
- d. An employee's admission.

### **4.2 Mandatory Administrative Actions upon a Finding of Illegal Drug Use**

4.2.1 The supervisor shall, in consultation with the Center HRO, initiate disciplinary action against any employee found to use illegal drugs.

4.2.2 Supervisors shall refer employees found to use illegal drugs to the EAP.

4.2.3 If an employee found to use illegal drugs occupies a TDP, management shall immediately remove the employee from that position.

4.2.3.1 At the discretion of the Center Director (or designee) and as part of a program of counseling and rehabilitation approved by the EAP, an employee may be permitted to return to duty in a TDP if the return would not endanger public health, safety, or national security.

### **4.3 Disciplinary Action**

4.3.1 Disciplinary action initiated against an employee found to be using illegal drugs may include the full range of disciplinary options, up to and including removal. The severity of the action will depend on the circumstances of each case and be consistent with E.O. 12564.

4.3.2 Supervisors shall initiate disciplinary action against any employee found to use illegal drugs except when an employee voluntarily admits to illegal drug use in accordance with the conditions identified in paragraph 4.4.

4.3.3 Disciplinary action will be consistent with Government-wide statutes and regulations, collective-bargaining agreements, and Agency policies.

4.3.4 When appropriate, a supervisor may enter into a disciplinary or last chance agreement with the employee. Such an agreement shall include requirements for successful completion of a program of counseling and rehabilitation approved by the EAP.

### **4.4 Voluntary Referral (Safe Harbor)**

4.4.1 Under E.O. 12564, management shall initiate action to discipline any employee found to use illegal drugs in every circumstance except when an employee completes the following under the Agency's "Safe Harbor," which is a self-referral option that allows any employee to step forward and identify him or herself as an illegal drug user for the purpose of entering a drug-treatment program.

4.4.1.1 A supervisor shall not initiate disciplinary action for illegal drug use against an employee who meets all three of the following conditions:

- a. Voluntarily identifies him or herself to management as a user of illegal drugs, prior to being identified through other means.
- b. Successfully completes counseling and rehabilitation through a program recommended and/or approved by an EAP.
- c. Refrains from using illegal drugs after successful completion of counseling and rehabilitation.

4.4.2 The key to this provision's rehabilitative effectiveness is an employee's willingness to overcome denial by voluntarily admitting their drug-use problem to their self, to management, and others. Therefore, this provision is not available to an employee who:

- a. Is asked to provide a urine specimen under random, reasonable-suspicion, post-accident, or unsafe practice testing and who thereafter (i.e., just before or after the specimen is collected) admits to drug use.



- b. Admits to drug use (on a form or in an interview) during a background investigation required for his/her position or admits to drug use after being asked to provide drug use information for the investigation.
- c. Admits to drug use after being arrested, indicted, or convicted for a drug-related felony or misdemeanor.
- d. Has previously been found to use illegal drugs. A second finding of illegal drug use requires initiation of removal and thus is not covered by the protection of Safe Harbor.

4.4.3 When an employee admits to illegal drug use for purposes of invoking Safe Harbor, it constitutes a finding of illegal drug use. This means that the employee is subject to other (non-disciplinary) consequences applicable to an employee found to use illegal drugs, to include removal from his/her TDP, follow-up testing, and the requirement that a subsequent finding result in initiation of removal.

4.4.4 An employee who invokes Safe Harbor is subject to review of their eligibility to occupy a sensitive position or hold a security clearance (if applicable), based on the admission of drug use. Safe Harbor does not protect an employee from disciplinary action (up to and including removal) based on revocation of their security clearance or eligibility to occupy a sensitive position, even if such revocation is due to illegal drug use reported by the employee under Safe Harbor.

## **4.5 Initiation of Mandatory Removal from Federal Service**

4.5.1 In accordance with E.O. 12564, § 5(d), supervisors shall initiate action to remove an employee for any of the following reasons:

- a. Refusal to obtain counseling and rehabilitation through an EAP, after having been found to use illegal drugs.
- b. Use of illegal drugs following a first finding of illegal drug use.
- c. Refusal to be tested, when required.

4.5.2 Supervisors and/or management officials shall consult with the Center's HRO before any disciplinary action is initiated.

## **4.6 Refusal to Take a Drug Test**

4.6.1 Any one of the following shall be deemed a refusal to take a drug test:

- a. Failure to appear for any test within a reasonable time, as determined by management, after being directed to do so.
- b. Failure to remain at the collection site until the collection process is complete.
- c. Failure to provide a urine specimen for any drug test required by NASA.
- d. Failure to permit observation or monitoring while providing a specimen, when required as described in chapter 3, or failure to follow the observer's instructions related to the collection process.
- e. Failure to provide a sufficient amount of urine when directed and when the MRO has determined through a required medical evaluation that there was no adequate medical explanation for the failure.
- f. Failure or refusal to take an additional drug test or collection, as directed by management or by the collector (e.g., based on information that the specimen provided has been tampered with).
- g. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process (i.e., as described in section 3.1) or as directed by management.
- h. Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, disrupt the collection process, failure to wash hands after being directed to do so by the collector).
- i. Wearing or possession of a prosthetic or other device or substance that could be used to interfere with the collection process or to adulterate or substitute the specimen.
- j. Any attempt to adulterate or substitute the specimen provided or admission to the collector or MRO that the donor adulterated or substituted the specimen.

4.6.2 When an employee refuses to be tested as described above, this shall be considered equivalent to a finding of illegal drug use; therefore, the employee is subject to the full range of consequences, including disciplinary actions up to and including removal, prescribed in this chapter.

4.6.3 If any individual refuses a drug test as described above, the collector shall contact the NSSC Drug Testing Team who will contact the Center DPC to initiate appropriate action.

## 4.7 Applicants

4.7.1 If an outside applicant refuses to take a drug test as described in section 4.6, the Agency shall withdraw an offer of employment and not hire the individual.

4.7.2 An applicant whose result is negative/dilute shall retest until a negative result is received.

4.7.3 Agency officials shall withdraw an offer of employment to any outside applicant with a verified test result that is other than negative/dilute. The applicant may not reapply to the Agency for a period of six months from the date of the other than negative test result.

4.7.3.1 The Center HRO shall object to the applicant for medical or suitability reasons and inform the applicant that the results of the pre-employment drug test preclude NASA from hiring the individual.

4.7.4 In a situation when a current employee, tentatively selected for a TDP, refuses to take a drug test or has a verified other than negative test result, the employee shall be subject to the full range of consequences, including disciplinary actions up to and including removal, prescribed in this chapter. The tentative job offer for the TDP shall be withdrawn.

## **Chapter 5. Rehabilitation**

### **5.1 Referral and Availability**

5.1.1 The Center EAP shall provide employees with findings of illegal drug use (or any employee, upon their request) with available options for drug treatment and rehabilitation programs that provide the best chance for success.

5.1.2 For employees referred to the EAP with findings of illegal drug use: in the event that an employee is not satisfied with the treatment or rehabilitation program, the employee may seek a review of the EAP's referral by notifying the EAP Administrator prior to completion of the program. The EAP Administrator's decision shall be final and not be subject to further administrative review.

5.1.3 Regardless of the treatment program chosen, the employee shall be responsible for the cost and successful completion of the treatment.

### **5.2 Use of Leave**

5.2.1 For absences during duty hours during the assessment/referral phase of rehabilitation, an employee will be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session up to a maximum determined by the supervisor according to workload requirements, leave regulations, and Agency policy.

5.2.2 Absences during duty hours for rehabilitation/treatment after the assessment/referral phase shall be charged to the appropriate leave category, (e.g., annual, sick, or leave without pay).

## Chapter 6. Training and Education

### 6.1 Supervisory Training

6.1.1 The Agency shall provide training to assist supervisors in recognizing and addressing illegal drug use by employees.

6.1.2 Training shall be required of all supervisors and may be presented as a separate course or be included as part of an ongoing supervisory training program.

6.1.3 Training will be provided as soon as possible after a person assumes supervisory responsibility; however, failure to receive such training shall not invalidate otherwise proper management decisions.

6.1.4 The purpose of supervisory training with respect to the DFWP is to provide the following information:

- a. Agency policies relevant to work-performance problems, drug use and prevention, and the EAP, including associated supervisory responsibilities.
- b. The rights of employees.
- c. The responsibilities of offering EAP services.
- d. The process for recognizing and documenting performance and behavioral changes.
- e. The roles of the medical staff, supervisors, HR staff, legal counsel, and EAP personnel.
- f. How to use the EAP.
- g. The process of reintegrating employees into the workforce who have successfully completed a rehabilitative program.

### 6.2 Employee Education

6.2.1 Each Center shall offer drug education to all employees which include the following objectives:

- a. Types and effects of drugs.
- b. Employee rights.
- c. Symptoms of drug use and its effect on performance and conduct.
- d. The relationship of the EAP to the DFWP.
- e. Other relevant treatment, rehabilitative, and confidentiality issues.

6.2.2 Drug education activities may include the distribution of electronic and written materials, visual media, lunchtime employee forums, employee drug-awareness days, and Web-based training.

## Chapter 7. Records and Reports

### 7.1 Confidentiality of Test Results

7.1.1 The laboratory will disclose confirmed laboratory test results only to the MRO.

7.1.2 Any result, other than negative, that the MRO justifies by appropriate medical or scientific documentation to account for the results as other than the intentional ingestion of an illegal drug shall be treated as a negative test result and may not be released for purposes of identifying illegal drug use.

7.1.3 Test results shall be protected under Privacy Act provisions and implementing regulations, including 5 U.S.C. § 552a and 42 CFR Part 2.

7.1.4 The MRO will maintain only those records necessary for compliance with E.O. 12564.

7.1.5 The MRO will maintain records in accordance with the recordkeeping schedule identified in the most recent MRO Manual for Federal Agency Workplace Drug Testing Programs and the NARA GRS 1-36, Federal Workplace Drug Testing Program Files. If there are inconsistencies between the MRO Manual and GRS 1-36, Federal Workplace Drug Testing Program Files, the GRS 1-36 recordkeeping schedule shall apply.

7.1.6 Any records, including drug-test results, may be released to management officials with authority to take adverse personnel actions or for purposes of auditing the activities of the MRO. For the purposes of audits, the disclosure of the records shall not include personally identifiable information on any individual employee.

7.1.7 To comply with 42 CFR, Part 2, the results of a drug test of an employee may not be disclosed without the prior written consent of the employee, unless the disclosure would be to any of the following:

- a. The Agency's MRO.
- b. The EAP Administrator, when the employee is receiving counseling or treatment or is otherwise participating in the EAP.
- c. Any supervisor, management official(s), or employee relations specialist with the authority to take or recommend adverse personnel action against the employee.
- d. The Office of Chief/General Counsel, for the purposes of providing counsel in connection with drug testing results.
- e. Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any adverse personnel action.

7.1.8 Test results with all identifying information removed will be made available to personnel, including the DPC and NSSC Drug Testing Team, for data collection and other reporting or evaluation activities.

### 7.2 Employee Access to Records

7.2.1 Employees subject to drug testing shall, upon written request, have access to any records relating to the following:

- a. The individual's drug test.
- b. The results of any relevant certification, review, or revocation of proceedings.

### 7.3 Confidentiality of Records

7.3.1 All drug-testing information, specifically relating to individuals, is confidential and shall be treated as such by anyone authorized to review, compile, or maintain program records.

- a. The DPC and NSSC Drug Testing Team shall maintain all records relating to reasonable-suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary in accordance with GRS 1-36, Federal Workplace Drug Testing Program Files.
- b. All records and information of the personnel actions taken on employees with verified other than negative test results should be forwarded to the appropriate HRO representative and shall remain confidential and be appropriately safeguarded, allowing access only to authorized individuals who have a need to know.

### 7.4 Maintenance of Records

7.4.1 All records shall be maintained in accordance with Privacy Act laws and regulations regarding confidentiality of patient records and this directive.

7.4.2 Records are maintained in accordance with NPR 1441.1 and the NARA guidelines for Federal Workplace Drug Testing Program Files.

7.4.3 The recordkeeping system captures sufficient documents to meet the operational and statistical needs of this Plan and includes the following:

- a. Notices of verified other than negative test results referred by the MRO.
- b. Written materials justifying reasonable-suspicion and post-accident or unsafe practice testing or evidence that an individual may have altered or tampered with a specimen.
- c. Anonymous statistical reports.
- d. Other documents that the DPC, NSSC Drug Testing Team, MRO, or EAP Administrator deem necessary for compliance with this directive.
- e. If necessary, other records as required by subsequent administrative or judicial proceedings or at the discretion of the DPM.

## **7.5 Employee Assistance Program (EAP) Records**

7.5.1 The EAP Administrator shall maintain records necessary to carry out his/her duties and comply with this directive.

7.5.2 All medical and/or rehabilitative records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 CFR, Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress.

## **7.6 Statistical Information**

7.6.1. The Center DPCs shall collect and compile anonymous statistical data for reporting the following to the NSSC Drug Testing Team at the end of each fiscal year:

- a. Number of random, reasonable-suspicion, post-accident or unsafe practice, follow-up, and pre-employment tests administered.
- b. Number of voluntary drug counseling referrals.
- c. Number of involuntary drug counseling referrals.
- d. Number of terminations or denial of employment offers resulting from the refusal to submit to testing, alteration of specimens, or the failure to successfully complete an EAP counseling or rehabilitative program and follow-up testing.
- e. Number of employees who successfully complete the EAP counseling or rehabilitative program and follow-up testing.
- f. Number of employees and percent of total employees provided with DFWP educational materials, and type of materials distributed.
- g. Number and percent of supervisors who received training on the NASA DFWP and the topics covered.

7.6.2 This data, along with other pertinent information, shall be compiled and provided to the NSSC Drug Testing Team for inclusion in the HHS Annual Survey Report to Congress to assist in overall program evaluation and to determine if changes to the HHS Mandatory Guidelines should be recommended.

## Appendix A. Definitions

**Adulterated Specimen.** A urine specimen containing either a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration.

**Applicant.** Any individual tentatively selected for a TDP who has not, immediately prior to the selection, been subject to random testing by NASA. This includes current NASA employees who are being reassigned from a non-TPD to a TPD.

**Collection Site.** A place designated by the Agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collector.** A person who has successfully completed training to instruct and assist individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

**Days.** Calendar days unless specified otherwise.

**Dilute Specimen.** A urine specimen with less than expected physiological constituents but within the physiologically producible ranges of human urine and may be reported in conjunction with a positive or negative drug test.

**Disciplinary Agreement.** An agreement between the Agency and an employee that contains terms under which discipline will be mitigated or held in abeyance.

**Employees in Sensitive Positions.** Employees in positions designated as Special Sensitive, Critical Sensitive, or Non-critical Sensitive; employees in positions designated as sensitive in accordance with E.O. 10450, as amended; employees who have been granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness in accordance with E.O. 12356; individuals serving under Presidential appointments requiring Senate confirmation; Law Enforcement Officers as defined in 5 U.S.C. §§8331(20) and 8401(17); or other positions that involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

**Follow-up Test.** A specimen collected from an employee to ensure that the employee remains drug-free after being reinstated to a TDP.

**Illegal Drug.** A controlled substance included in Schedule I or II, as defined by 21 U.S.C. § 802(6), the possession of which is unlawful under Chapter 13 of that Title. The term illegal drug does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law, not otherwise in conflict with Federal law.

**Invalid Result.** A result reported by an HHS certified laboratory to a Medical Review Officer, in accordance with established drug testing criteria for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

**Last Chance Agreement.** An agreement between the Agency and an employee that contains terms under which the employee will be given a last opportunity to maintain employment.

**Management Official.** An employee required or authorized to formulate, determine, or influence Agency policies.

**Negative/Dilute Result.** A result reported by an HHS certified laboratory to a Medical Review Officer when a result cannot be determined based on specific constituents but is within the physiologically producible ranges of human specimen.

**Negative Result.** A result reported by an HHS certified laboratory when a specimen contains no drug or a drug metabolite that is less than the cutoff concentration for that drug and the specimen is a valid specimen.

**Positive Result.** A result reported by an HHS certified laboratory when a specimen contains a drug or drug metabolite.

**Responsible Official.** An individual whose assigned job duties include authority over the location of the accident.

**Specimen.** Urine collected from an individual that may be subdivided. **Split Specimen.** A urine specimen that has been subdivided into two parts (Bottle A and Bottle B) and independently sealed in the presence of the individual being tested.

**Substituted Specimen.** A urine specimen that could not have been derived from the individual's body at the time of collection because it is inconsistent with normal physiology.

**Supervisor.** An employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of

independent judgment.

Testing Designated Positions. In accordance with the guidelines identified in Appendix C, positions that have been designated by management for random testing.

Voluntary Test. A specimen collected from an employee who is not in a TDP and who has volunteered for random testing.



## Appendix B. Acronyms

AA	Assistant Administrator
CCF	Control Custody Form
CDL	Commercial Driver's License
CFR	Code of Federal Regulations
DFWP	Drug Free Workplace Program
DPC	Drug Program Coordinator
DPM	Drug Program Manager
EAP	Employee Assistance Program
GRS	General Records Schedule
HHS	Health and Human Services
HRO	Human Resources Office
ICG	Interagency Coordinating Group
MRO	Medical Review Officer
NARA	National Archives and Records Administration
NPR	NASA Procedural Requirements
NSSC	NASA Shared Services Center
OGC	Office of General Counsel
OHCM	Office of Human Capital Management
OIG	Office of the Inspector General
ONDCP	Office of National Drug Control Policy
OPM	Office of Personnel Management
SAMHSA	Substance Abuse and Mental Health Services Administration
TDP	Test Designated Position
U.S.C.	United States Code

## Appendix C. NASA Guidelines for Determining Testing Designated Positions (TDPs) Subject to Random Drug Testing.

*Note: Use the questions that relate to categories of positions in the Agency's electronic Position Description System (ePDS) in conjunction with this Appendix to document the basis for the determination of a position's inclusion or exclusion from the Agency's TDP pool. Responses to the questions will be completed jointly by an HR Specialist and the supervisor and documented in the ePDS. When a position is designated as a TDP, the Designation Worksheet will be completed in ePDS.*

C.1 The Interagency Coordinating Group (ICG) Executive Committee, under the authority of Office of National Drug Control Policy (ONDCP), issued a memorandum dated August 1, 1999, Guidance for Selection of TDPs. This guidance superseded all previous guidance and criteria for the selection of TDPs and is the primary reference for NASA's selection of TDPs.

C.1.1 By applying the criteria of E.O. 12564, § 7(d), NASA identified the pool of sensitive positions which might be subject to random drug testing. At the time the E.O. was issued, all positions satisfying these criteria could be appropriately designated for testing.

### C.2 Guidelines

C.2.1 The ICG Executive Committee's guidance provides lists of presumptive, preferred, discretionary, and disfavored TDPs.

C.2.2 If the Agency head is of the opinion that the unique circumstances of the Agency warrant the exclusion of all or some of the positions in these categories, justification for doing so will be presented to and approved by the ICG Executive Committee.

C.2.3. Presumptive TDPs are positions that are included in every Agency plan. If such positions exist in the Agency, they include the following:

- a. Employees who carry firearms. That is, employees who actually carry firearms on a daily or regular basis are included in this presumptive category and should be in all TDP pools.
- b. Employees who operate motor vehicles. This category includes motor vehicles:
  - (1) Weighing more than 26,001 pounds.
  - (2) Transporting hazardous materials.
  - (3) Carrying passengers, including those that transport Government officials and/or foreign dignitaries or a passenger shuttle.

*Note: Department of Transportation regulations implementing the Omnibus Transportation Employee Testing Act of 1991 require random testing for drugs and alcohol of Federal employees who operate vehicles that require a Commercial Driver's License (CDL).*

- (4) A CDL is required for vehicle operators who perform any of the following:
  - (a) Carry 16 or more passengers.
  - (b) Transport hazardous materials.
  - (c) Operate a vehicle weighing 26,001 pounds or more.
- c. Aviation flight crew members, air traffic controllers, and railroad operating crews.

### C.3 Preferred TDPs

C.3.1 The well-developed law and clear public interest applicable to drug testing make it evident that the categories set out under this section represent strong Government interests for drug testing and will almost always meet established judicial standards. However, inclusion of the following positions as TDPs is not presumptive. To ensure reasonable uniformity, agencies will present Agency-specific justifications for testing of these positions. Agencies choosing to exclude positions or functions specified below from drug testing are required to provide justification not to designate one or more of these positions as TDPs to the ICG Executive Committee.

C.3.2 Certain health and safety positions.

C.3.2.1 The first major category includes certain health and safety responsibilities that would cause immediate, substantial physical injury if carried out under the influence of drugs, usually involving a potentially dangerous

instrument or machine. These positions are occupied by:

a. Employees authorized to carry firearms. This includes employees, such as guards or security personnel, who do not regularly carry a firearm but are authorized to carry one in some circumstances, e.g., emergencies. The rationale for including these positions as TDPs is the same as employees with a security clearance who only rarely see classified documents. Such employees are granted security clearances in advance to provide the employee appropriate access to classified material as soon as the need arises.

b. Railroad employees engaged in safety-sensitive tasks. This category includes persons engaged in handling train movement orders, safety inspectors, or those engaged in maintenance and repair of signal systems.

c. Aviation personnel. This category includes any of the following:

- (1) Flight attendants.
- (2) Flight instructors.
- (3) Ground instructors.
- (4) Flight testing personnel.
- (5) Aircraft dispatchers.
- (6) Aircraft maintenance personnel with direct and critical maintenance responsibilities.
- (7) Aviation security and screening personnel.
- (8) Aircraft safety inspectors.

C.3.2.3 Presidential appointees requiring Senate confirmation.

C.3.2.4 Front-line law enforcement personnel. This category includes front-line law enforcement personnel with proximity to criminals, drugs, or drug traffickers. Positions include guard and law enforcement personnel who have access to firearms (but do not carry weapons or otherwise meet the standards for a Presumptive TDP) and those directly involved in drug interdiction duties.

C.3.2.5 Drug rehabilitation employees. This category includes employees involved in drug rehabilitation or equivalent employee assistant duties so inimical to illegal drug use that such employees can expect inquiry into their fitness.

C.3.2.6 Personnel having access to truly sensitive information. This category includes personnel having access to truly sensitive information, for example, national security material that it is reasonable to assume may damage national interests if compromised. Specifically, these positions include those which require a secret, top secret, or higher clearance.

## C.4 Discretionary Designations

C.4.1 In addition to the categories of positions identified as Presumptive and Preferred TDPs for inclusion in Agency plans, there are other Agency-specific sensitive positions which warrant designation for testing. From the outset, NASA's approach in determining TDPs subject to random drug testing has emphasized careful consideration and development of the criteria to be used in designating TDPs with full participation by the NASA Centers.

NASA-specific criteria were first developed by the NASA Drug-Free Workplace Steering Committee. Rather than broad occupational coverage determinations, the TDP criteria emphasizes the review of the specific tasks performed and the level of responsibility exercised in individual positions.

C.4.2 The categories of positions identified below as Discretionary Designations are positions that meet Agency-specific criteria for TDPs. These positions involve the performance of a function or task in which the effects of an error or mistake would likely result in loss of life or serious injury, threaten public safety, and/or impact the achievement and safety of the Agency's missions. These TDPs, along with written justification, are subject to the review and approval of the ICG Executive Committee.

- a. Employees performing direct hands-on work with explosive, toxic, radioactive, or other dangerous materials or substances.
- b. Employees performing direct hands-on work with fluids or gases under pressure.
- c. Employees performing hands-on operation or maintenance of major mechanical or electrical equipment that is mission critical and upon which the successful achievement of the Agency's missions is dependent. This does not include positions that involve equipment that poses minimal or no risk or danger to the safety of the public.
- d. Employees performing the duties of a safety or quality assurance specialist or other reliability, quality assurance, or safety-related duties that require real-time major decision-making regarding the health and safety of the public or operations of mission critical systems upon which the successful achievement of the Agency's missions is

dependent.

- e. Employees performing certain launch and in-flight operations work.
- f. Employees performing medical treatment and patient care or who have unmonitored or minimally monitored access to drugs.
- g. Employees having unescorted access to mission critical systems.
- h. Managers or supervisors technically qualified to make real-time decisions in lieu of a nonsupervisory employee in a TDP.